Supreme Court, U.S.
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No. 91-1489

In the Supreme Court of the United States

OCTOBER TERM, 1991

MONTE LEE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals properly affirmed the dismissal of a complaint containing the same claims that had been dismissed with prejudice in several previous cases.

TABLE OF CONTENTS

	Page
Opinion below	1
Jurisdiction	1
Statement	1
Argument	5
Conclusion	7

TABLE OF AUTHORITIES

Cases:

Baldwin v. *Iowa State Traveling Men's Ass'n*, 283 U.S. 522 (1931)	6
Federated Dep't Stores, Inc. v. *Moitie*, 452 U.S. 394 (1981)	6
Lee v. *Biden*, No. CV 88-2090-RG(E) (C.D. Cal. Aug. 4, 1988), aff'd, 876 F.2d 897 (9th Cir.), cert. denied, 493 U.S. 984 (1989)	3, 5
Lee v. *Burger*, No. 83-5789 (9th Cir. Sept. 7, 1983), cert. denied, 465 U.S. 1067 (1984)	3, 5
Lee v. *Law Offices of Joseph L. Alioto*, 633 F.2d 222 (9th Cir. 1980), cert. denied, 450 U.S. 967 (1981)	2, 5
Lee v. *Mosk*, No. CV 66-1804-WMB (C.D. Cal. May 18, 1972)	2
Lee v. *Reagan*, No. CV 85-3604-WJR (C.D. Cal. Mar. 27, 1985), aff'd, 789 F.2d 921 (9th Cir. 1986), cert. denied, 479 U.S. 1035 (1987)	5
Lee v. *United States Government*, 942 F.2d 792 (9th Cir. 1991)	5
Parklane Hosiery Co. v. *Shore*, 439 U.S. 322 (1979)	6

Statutes:

Clayton Act § 4, 15 U.S.C. 15	2
42 U.S.C. 1983	4
42 U.S.C. 1985	4
42 U.S.C. 1986	4

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OPINION BELOW

The opinion of the court of appeals is unreported, but the judgment is noted at 942 F.2d 792 (Table).

JURISDICTION

The judgment of the court of appeals was entered on August 30, 1991. A petition for rehearing with suggestion for rehearing en banc was denied on November 25, 1991. The petition for a writ of certiorari was filed on February 5, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In 1966, petitioner sued Metro-Goldwyn-Mayer, Inc., and Cinerama Productions, Inc., under the

Clayton Act § 4, 15 U.S.C. 15, alleging that the defendants had violated the antitrust laws and injured him in his ability to market a motion picture called "Grimm's Fairy Tales." *Lee* v. *Mosk*, No. CV 66-1804-WMB (C.D. Cal. May 18, 1972) (*MGM*). Pet. 4. A directed verdict was entered in favor of the defendants on May 18, 1972. Pet. 13.

Proceeding pro se, petitioner then sued the law firm that represented him in the first suit, the defendants in the first suit, and the district judge who entered the directed verdict. The complaint repeated the allegations that formed the basis for the *MGM* suit, claimed that his lawyers had fraudulently colluded with opposing counsel in that case to secure the directed verdict, and alleged that the district court's directed verdict ruling was "false and void." See Pet. 11-12; Petitioner's C.A. Br. 7-9. The district court dismissed the suit on the ground of absolute judicial immunity, res judicata, and collateral estoppel. See Pet. 16-17. The Ninth Circuit affirmed, and this Court denied certiorari. *Lee* v. *Law Offices of Joseph L. Alioto*, 633 F.2d 222 (1980), cert. denied, 450 U.S. 967 (1981).

Over the next several years, petitioner engaged in a pattern of suing numerous officials from each branch of the federal government. In each case, petitioner repeated his allegations against MGM and Cinerama, his lawyers, and the trial court judges who ruled against him. In addition, the complaints asserted that government defendants had "protected" the unlawful activities of MGM and failed to uphold their constitutional duties by refusing to review or overturn the dismissal of petitioner's previous suits.[1] Each

[1] Petitioner challenged the President's failure to "demand the U.S. Supreme Court to open its door" to petitioner's

complaint was dismissed. *Lee* v. *Burger*, No. 83-5789 (9th Cir. Sept. 7, 1983), cert. denied, 465 U.S. 1067 (1984); *Lee* v. *Reagan*, No. CV 85-3604-WJR (C.D. Cal. Mar. 27, 1985), aff'd, 789 F.2d 921 (9th Cir. 1986) (Table), cert. denied, 479 U.S. 1035 (1987); *Lee* v. *Biden*, No. CV 88-2090-RG(E) (C.D. Cal. Aug. 4, 1988), aff'd, 876 F.2d 897 (9th Cir.) (Table), cert. denied, 493 U.S. 984 (1989).

2. On June 18, 1990, petitioner, proceeding pro se, filed the present action, and named as the defendant the "United States Government." Petitioner stated that "[t]his action covers four * * * petitions to the United States Supreme Court." See Compl. at 3 (capitalization omitted) (citing the *Alioto*, *Burger*, *Reagan*, and *Biden* petitions). Petitioner then repeated claims that he had made in those prior suits. Petitioner alleged that then-Judge Kennedy, as a member of a Ninth Circuit panel that affirmed the dismissal of one of plaintiff's actions, "act[ed] outside the scope of his employment" by "extend[ing] judicial immunity" to defendants in petitioner's prior suits; that the Senate Judiciary Committee "approved the unlawful extension of judicial immunity" by voting to confirm Justice Kennedy to the Supreme Court; that the Supreme Court and the "[g]overnment," by denying certiorari in the prior cases, "gave protection * * * to Metro-Goldwyn-Mayer, Inc., a corporate tax evader." *Id.* at 5 (capitalization omitted). Peti-

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claims; the Attorney General's failure to appoint a special prosecutor to examine petitioner's claims against the judiciary; the judiciary's invocation of the doctrine of judicial immunity; this Court's refusal to grant several petitions for writs of certiorari; and the Senate's confirmation of Justice Kennedy (who had been a member of one of the Ninth Circuit panels to rule against petitioner) as an Associate Justice. See Gov't Mot. to Dis. 21, Exhs. A-C.

tioner's complaint also repeated the claims against the defendants in the *MGM* suit. *Id.* at 5-11.

The complaint alleged that the "three branches of government * * * have conspired together to deprive" petitioner of his rights under the Constitution and various civil rights statutes. See Compl. at 13 (citing 42 U.S.C. 1983, 1985, 1986). The Complaint cited various provisions of the U.S. Constitution as a basis for jurisdiction. *Id.* at 1-2. The Complaint sought an order that Congress and the President had wrongfully "protected [the] unlawful extension of judicial immunity"; that the Supreme Court had wrongfully refused to "interpret the laws" by denying certiorari in petitioner's four prior cases; and that the defendants generally had violated their "oath to uphold the Constitution" and denied petitioner due process and equal protection of the laws by "permitt[ing] the illegal use of the American People's court system by a dummy corporation formed to conceal proceeds, evade taxes, and swindle investors."[2] *Id.* at 14-15 (capitalization omitted). Petitioner sought compensatory damages of $1.5 million for the alleged worth of the motion picture "Grimm's Fairy Tales," and $50 million in punitive damages. *Id.* at 14.

On October 26, 1990, the district court dismissed the complaint on the ground that the claims were identical to those filed in previous actions. The court also found that the repeated filing of complaints containing matters previously adjudicated was frivolous, harassing to defendants, and abusive of the judicial process. The court therefore enjoined petitioner from filing any other complaint dealing with the same

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[2] The last allegation refers to petitioner's claims in the 1966 *MGM* litigation.

subject matter without first obtaining leave of the court.

3. The court of appeals affirmed in an unpublished memorandum decision. It held that the district court did not err in dismissing the action, which the court characterized as frivolous and repetitious. See *Lee* v. *United States Government*, No. 90-56362 (9th Cir. Aug. 30, 1991) (942 F.2d 792 (Table)). The court also upheld the district court's injunction against filing future complaints without court approval.[3]

ARGUMENT

The courts below properly dismissed petitioner's complaint as repetitive and frivolous. Petitioner's present complaint—like each complaint he has filed since the *MGM* litigation was decided adversely to him in 1971—stems from dissatisfaction with the outcome of that case. First, petitioner sued his lawyers and other participants in the *MGM* litigation, alleging all manner of improprieties; that litigation ended in this Court's denial of certiorari in 1981. See *Lee* v. *Law Offices of Joseph L. Alioto*, 633 F.2d 222 (9th Cir. 1980) (Table), cert. denied, 450 U.S. 967 (1981). Since then, petitioner has repeatedly sued various government officials and entities on the ground that they permitted the alleged injustices against petitioner in *MGM* and *Alioto* to occur. Each of those actions also ended with this Court's denial of certiorari. See *Lee* v. *Burger*, No. 83-5789 (9th Cir. Sept. 7, 1983), cert. denied, 465 U.S. 1067 (1984); *Lee* v. *Reagan*, No. CV 85-3604-WJR (C.D. Cal. Mar. 27, 1985), aff'd, 789 F.2d 921 (9th Cir. 1986) (Table), cert. denied, 479 U.S. 1035 (1987); *Lee* v. *Biden*, No. CV 88-

[3] Petitioner has not challenged in this Court the injunction against his filing additional claims without leave of court.

2090-RG(E) (C.D. Cal. Aug. 4, 1988), aff'd, 876 F.2d 897 (9th Cir.) (Table), cert. denied, 493 U.S. 984 (1989).

It is thus clear that any claims petitioner may have had as a result of his alleged mistreatment in the *MGM* litigation were resolved long ago. In the present action, petitioner claims that in the *Alioto* decision, the court of appeals handed down a "fraudulent" order (Pet. 8), "overlooked" the offense of misprision of a felony,[4] and ignored "positive proof * * * that false orders and adverse judgments were handed down by" the lower court judges. Pet. 19. Although it is not clear from the present petition for certiorari what constitutes the basis for the alleged "fraud" and "false order[]," it is clear that the alleged malfeasance stemmed from the *MGM* litigation. It is also clear that the federal courts have repeatedly been forced to consider the same allegations arising from the same set of operative facts, and have repeatedly found petitioner's claims to be without merit. The district court accordingly did not err in dismissing on grounds of claim preclusion. See *Federated Dep't Stores, Inc.* v. *Moitie*, 452 U.S. 394, 401 (1981); *Parklane Hosiery Co.* v. *Shore*, 439 U.S. 322, 335-337 (1979); *Baldwin* v. *Iowa State Traveling Men's Ass'n*, 283 U.S. 522, 525-526 (1931).

[4] It appears that petitioner raised the issue of misprision of a felony for the first time in his petition for rehearing in the present case (see Pet. for Reh'g), more than ten years after *Alioto* was decided.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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